

The House Committee on Judiciary Non-civil offers the following substitute to SB 180:

A BILL TO BE ENTITLED
AN ACT

To amend Article 3 of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to cancellation, suspension, and revocation of drivers' licenses, so as to provide for matters relative to drivers' licenses of persons convicted of driving under the influence; to allow certain drivers with suspended licenses to be issued limited driving permits; to provide for the issuance of a limited driving permit to a person convicted of driving under the influence subject to certain conditions; to amend Article 7 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to ignition interlock devices as probation condition, so as to provide the courts with more authority with regard to the availability of ignition interlock device limited driving permits or probationary licenses and habitual violator probationary licenses for drivers convicted of a second DUI; to provide a court the ability to issue a certificate for such permits and licenses; to change provisions relating to proof of compliance with Code Section 42-8-111; to provide for revocation of probation under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to cancellation, suspension, and revocation of drivers' licenses, is amended by revising subsection (b) of Code Section 40-5-57.1, relating to suspensions of licenses of persons under age 21, as follows:

"(b) A person whose driver's license has been suspended under subsection (a) of this Code section shall:

(1) Subject to the requirements of subsection (c) of this Code section and except as otherwise provided by paragraph (2) of this subsection:

(A) Upon a first such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after six months; and

(B) Upon a second or subsequent such suspension, be eligible to apply for license reinstatement and, subject to payment of required fees, have his or her driver's license reinstated after 12 months; or

(2)(A) If the driver's license was suspended upon conviction for violation of Code Section 40-6-391, be subject to the provisions of Code Section 40-5-63.

(B) If such driver was convicted of driving under the influence of alcohol or of having an unlawful alcohol concentration and is otherwise subject to the provisions of paragraph (1) of subsection (a) of Code Section 40-5-63, ~~then such person shall not be eligible for a limited driving permit under Code Section 40-5-64, and:~~

(i) If the driver's alcohol concentration at the time of the offense was less than 0.08 grams, he or she shall not be eligible for license reinstatement until the end of six months; or

(ii) If the driver's alcohol concentration at the time of the offense was 0.08 grams or more, he or she shall not be eligible for license reinstatement until the end of 12 months.

(C) Upon a second conviction for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such driver shall not be eligible for license reinstatement until the end of 18 months."

SECTION 2.

Said article is further amended by revising subsections (a) and (e) of Code Section 40-5-64, relating to the issuance of limited driving permits for certain offenders, as follows:

"(a) To whom issued.

(1) Notwithstanding any contrary provision of Code Section 40-5-57 or 40-5-63 or any other Code section of this chapter, any person who has not been previously convicted or adjudicated delinquent for a violation of Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, may apply for a limited driving permit when and only when that person's driver's license has been suspended in accordance with paragraph (2) of subsection (a.1) of Code Section 40-5-22, subsection (d) of Code Section 40-5-57, paragraph (1) of subsection (a) of Code Section 40-5-63, or

paragraph (1) of subsection (a) of Code Section 40-5-67.2, or Code Section 40-5-57.1 if the person is 18 years of age or older.

(2) Any person whose driver's license has been suspended pursuant to subparagraph (b)(2)(C) of Code Section 40-5-57.1 or paragraph (2) of subsection (a) of Code Section 40-5-63 and who is subject to a court order for installation and use of an ignition interlock device as a condition of probation pursuant to the provisions Article 7 of Chapter 8 of Title 42 has been granted a certificate of eligibility by the court that imposed the second conviction may apply for a limited driving permit an ignition interlock device limited driving permit subject to the provisions of Article 7 of Chapter 8 of Title 42."

"(e) Fees, duration, renewal, and replacement of permit. A permit issued pursuant to this Code section shall be \$25.00 and shall become invalid upon the driver's eighteenth birthday in the case of a suspension under paragraph (2) of subsection (a.1) of Code Section 40-5-22, upon the expiration of one year following issuance thereof in the case of a suspension for an offense listed in Code Section 40-5-54 or a suspension under Code Section 40-5-57, or a suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-63 for a violation of Code Section 40-6-391, upon the expiration of 30 days in the case of an administrative license suspension in accordance with paragraph (1) of subsection (a) of Code Section 40-5-67.2, ~~or~~ upon the expiration of ~~six~~ 14 months following proof of installation of an ignition interlock device in the case of ~~a limited driving permit issued to a person subject to a court order for installation and use of such a device pursuant to Article 7 of Chapter 8 of Title 42~~ an ignition interlock device limited driving permit, or upon the expiration of one year in the case of a suspension under Code Section 40-5-57.1 for any offense other than a second conviction for a violation of Code Section 40-6-391 within five years; except that such limited driving permit shall expire upon any earlier reinstatement of the driver's license. A person may apply to the department for a limited driving permit immediately following such conviction if he or she has surrendered his or her driver's license to the court in which the conviction was adjudged or to the department if the department has processed the citation or conviction. Upon the applicant's execution of an affidavit attesting to such facts and to the fact that the court had not imposed a suspension or revocation of his or her driver's license or driving privileges inconsistent with the driving privileges to be conferred by the limited driving permit applied for, the department may issue such person a limited driving permit. Permits issued pursuant to this Code section ~~are~~ shall be renewable upon payment of a renewal fee of \$5.00. Permits may be renewed until the person has his or her license reinstated for the violation that was the basis of the issuance of the permit. Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C

97 driver's license, a person may be issued a replacement for a lost or destroyed probationary
98 driver's license limited driving permit issued to him or her."

99 **SECTION 3.**

100 Article 7 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to
101 ignition interlock devices as probation condition, is amended by revising subsections (a), (b),
102 and (c) of Code Section 42-8-111, relating to court ordered installation of ignition interlock
103 devices, as follows:

104 "(a) ~~In addition to any other provision of probation, upon~~ Upon a second or subsequent
105 conviction of a resident of this state for violating Code Section 40-6-391 within five years,
106 as measured from the dates of previous arrests for which convictions were obtained to the
107 date of the current arrest for which a conviction is obtained, for which such person is
108 granted probation, the court shall ~~order as conditions of probation that~~ issue a certificate
109 of eligibility for an ignition interlock device limited driving permit or probationary license,
110 subject to the following conditions:

111 (1) Such person shall have installed and shall maintain in each motor vehicle registered
112 in such person's name ~~throughout the applicable six-month period prescribed by~~
113 ~~subsection (b) of Code Section 42-8-112~~ for a period of not less than 14 months a
114 functioning, certified ignition interlock device, ~~unless the court exempts the person from~~
115 ~~the requirements of this paragraph based upon the court's determination that such~~
116 ~~requirements would subject the person to undue financial hardship; and~~

117 (2) Such person shall have installed and shall maintain in any other motor vehicle to be
118 driven by such person ~~during the applicable six-month period prescribed by subsection~~
119 ~~(b) of Code Section 42-8-112~~ for a period of not less than 14 months a functioning,
120 certified ignition interlock device, and such person shall not ~~during such six-month period~~
121 drive any motor vehicle whatsoever that is not so equipped: during such period;

122 (3) Such person shall participate in a substance abuse treatment program as defined in
123 paragraph (16.2) of Code Section 40-5-1 or a drug court program in compliance with
124 Code Section 15-1-15 for a period of not less than 120 days;

125 For the purposes of this subsection, a plea of nolo contendere shall constitute a conviction;
126 and a conviction of any offense under the law of another state or territory substantially
127 conforming to any offense under Code Section 40-6-391 shall be deemed a conviction of
128 violating said Code section.

129 (b) The court may, in its discretion, decline to issue a certificate of eligibility for an
130 ignition interlock device limited driving permit or probationary license for any reason or
131 exempt a person from any or all ignition interlock device requirements upon a
132 determination that such requirements would subject such person to undue financial

133 hardship. Notwithstanding any contrary provision of Code Section 40-13-32 or 40-13-33,
134 a determination of financial hardship may be made at the time of conviction or anytime
135 thereafter. Any resident of this state who is ordered to use an ignition interlock device, as
136 a condition of probation, shall complete the DUI Alcohol or Drug Use Risk Reduction
137 Program and submit to the court or probation department a certificate of completion of the
138 DUI Alcohol or Drug Use Risk Reduction Program and certification of installation of a
139 certified ignition interlock device to the extent required by subsection (a) of this Code
140 section.

141 (c) In the case of any person subject to the provisions of subsection (a) of this Code
142 section, the court shall include in the record of conviction or violation submitted to the
143 Department of Driver Services ~~notice of the requirement for, and the period of the~~
144 ~~requirement for, the use of a certified ignition interlock device~~ a copy of the certificate of
145 eligibility for an ignition interlock device limited driving permit or probationary license
146 issued by the court or documentation of the court's decision to decline to issue such
147 certificate. Such ~~notice~~ certificate shall specify any exemption from the installation
148 requirements of paragraph (1) of subsection (a) of this Code section and any vehicles
149 subject to the installation requirements of paragraph (2) of ~~said~~ such subsection. The
150 records of the Department of Driver Services shall contain a record reflecting ~~mandatory~~
151 ~~use of such device~~ certificate, and the person's driver's license ~~or,~~ limited driving permit,
152 or probationary license shall contain a notation that the person may only operate a motor
153 vehicle equipped with a functioning, certified ignition interlock device."

154 SECTION 4.

155 Said article is further amended by revising subsections (a) and (b) of Code Section 42-8-112,
156 relating to proof of compliance required for reinstatement of certain drivers' licenses and for
157 obtaining probationary license, as follows:

158 "(a)(1) In any case where the court grants a certificate of eligibility for an ignition
159 interlock device limited driving permit or probationary license pursuant to Code Section
160 42-8-111 to a person whose driver's license is suspended pursuant to subparagraph
161 (b)(2)(C) of Code Section 40-5-57.1 or paragraph (2) of subsection (a) of Code Section
162 40-5-63, the Department of Driver Services shall not issue an ignition interlock device
163 limited driving permit until after the expiration of 120 days from the date of the
164 conviction for which such certificate was granted. ~~In any case where the court imposes~~
165 ~~the use of an ignition interlock device as a condition of probation on a resident of this~~
166 ~~state whose driving privilege is not suspended or revoked, the court shall require the~~
167 ~~person to surrender his or her driver's license to the court immediately and provide proof~~
168 ~~of compliance with such order to the court or the probation officer and obtain an ignition~~

interlock device restricted driving license within 30 days. Upon expiration of the period of time for which such person is required to use an ignition interlock device, the person may apply for and receive a regular driver's license upon payment of the fee provided for in Code Section 40-5-25. If such person fails to provide proof of installation to the extent required by subsection (a) of Code Section 42-8-111 and receipt of the restricted driving license within such period, absent a finding by the court of good cause for that failure, which finding is entered in the court's record, the court shall revoke or terminate the probation.

(2) The Department of Driver Services shall condition issuance of an ignition interlock limited driving permit for such person upon receipt of acceptable documentation of the following:

(A) That the person to whom such permit is to be issued has completed a DUI Alcohol or Drug Use Risk Reduction Program;

(B) That such person has completed a clinical evaluation as defined in Code Section 40-5-1 and enrolled in a substance abuse treatment program approved by the Department of Human Services or is enrolled in a drug court program;

(C) That such person has installed an ignition interlock device in any vehicle that he or she will be operating; and

(D) A certificate of eligibility for an ignition interlock device limited driving permit or probationary license from the court that sentenced such person for the conviction that resulted in the suspension or revocation of his or her driver's license for which he or she is applying for a limited driving permit.

(b)(1) In any case where the court grants a certificate of eligibility for an ignition interlock device limited driving permit or probationary license pursuant to Code Section 42-8-111 to a person whose driver's license is revoked as a habitual violator pursuant to Code Section 40-5-58, the Department of Driver Services shall not issue a habitual violator probationary license until after the expiration of two years from the date of the conviction for which such certificate was granted. ~~In any case where the court imposes the use of an ignition interlock device as a condition of probation on a resident of this state whose driving privilege is suspended or revoked, the court shall require the person to provide proof of compliance with such order to the court or the probation officer and the Department of Driver Services not later than ten days after the date on which such person first becomes eligible to apply for an ignition interlock device limited driving permit in accordance with paragraph (2) of this subsection or a habitual violator's probationary license in accordance with paragraph (3) of this subsection, whichever is applicable. If such person fails to provide proof of installation to the extent required by subsection (a) of Code Section 42-8-111 within the period required by this subsection,~~

absent a finding by the court of good cause for that failure, which finding is entered on the court's record, the court shall revoke or terminate the probation if such is still applicable.

(2) The Department of Driver Services shall condition issuance of a habitual violator probationary license for such person upon receipt of acceptable documentation of the following: ~~If the person subject to court ordered use of an ignition interlock device as a condition of probation is authorized under Code Section 40-5-63 or 40-5-67.2 to apply for reinstatement of his or her driver's license during the period of suspension, such person shall, prior to applying for reinstatement of the license, have an ignition interlock device installed and shall maintain such ignition interlock device in a motor vehicle or vehicles to the extent required by subsection (a) of Code Section 42-8-111 for a period of six months running concurrently with that of an ignition interlock device limited driving permit, which permit shall not be issued until such person submits to the department proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program; proof of having undergone any clinical evaluation and of having enrolled in any substance abuse treatment program required by Code Section 40-5-63.1, and proof of installation of an ignition interlock device on a vehicle or vehicles to the extent required by subsection (a) of Code Section 42-8-111. Such a person may apply for and be issued an ignition interlock device limited driving permit at the end of 12 months after the suspension of the driver's license. At the expiration of such six-month ignition interlock device limited driving permit, the driver may, if otherwise qualified, apply for reinstatement of a regular driver's license upon payment of the fee provided in Code Section 40-5-25.~~

(A) That the person to whom such permit is to be issued has completed a DUI Alcohol or Drug Use Risk Reduction Program;

(B) That such person has completed a clinical evaluation as defined in Code Section 40-5-1 and enrolled in a substance abuse treatment program approved by the Department of Human Services or is enrolled in a drug court program;

(C) That such person has installed an ignition interlock device in any vehicle that he or she will be operating; and

(D) A certificate of eligibility for an ignition interlock device limited driving permit or probationary license from the court that sentenced such person for the conviction that resulted in the suspension or revocation of his or her driver's license for which he or she is applying for a probationary license.

(3) ~~If the person subject to court ordered use of an ignition interlock device as a condition of probation is authorized under Code Section 40-5-58 or under Code Section 40-5-67.2 to obtain a habitual violator's probationary license, such person shall, if such~~

~~person is a habitual violator as a result of two or more convictions for driving under the influence of alcohol or drugs, have an ignition interlock device installed and maintained in a motor vehicle or vehicles to the extent required by subsection (a) of Code Section 42-8-111 for a period of six months following issuance of the probationary license, and such person shall not during such six-month period drive any motor vehicle that is not so equipped, all as conditions of such probationary license. Following expiration of such six-month period with no violation of the conditions of the probationary license, the person may apply for a habitual violator probationary license without such ignition interlock device condition.~~

(4) In any case where installation of an ignition interlock device is required, failure to show proof of such device shall be grounds for refusal of reinstatement of such license or issuance of such habitual violator's probationary license or the immediate suspension or revocation of such license.

(4) Any limited driving permit or probationary license issued to such person shall bear a restriction reflecting that the person may only operate a motor vehicle equipped with a functional ignition interlock device. No person whose limited driving permit or probationary license contains such restriction shall operate a motor vehicle that is not equipped with a functional ignition interlock device.

(5)(A) Any person who has been issued an ignition interlock device limited driving permit or a habitual violator probationary license bearing an ignition interlock device condition shall maintain such ignition interlock device in any motor vehicle he or she operates to the extent required by the certificate of eligibility for such permit or probationary license issued to such person by the court in which he or she was convicted, but for not less than 14 months.

(B) At the expiration of such certificate of eligibility ignition interlock device requirement, or 14 months, whichever is greater, a person issued an ignition interlock device limited driving permit may, if otherwise qualified, apply for reinstatement of his or her regular driver's license upon payment of the fee provided in Code Section 40-5-25.

(C) Following expiration of such certificate of eligibility ignition interlock device requirement, or 14 months, whichever is greater, a person issued a habitual violator probationary license bearing an ignition interlock device condition may apply for a habitual violator probationary license without such ignition interlock device condition, provided such person committed no violations of the conditions of such probationary license."

SECTION 5.

Said article is further amended by revising subsection (a) of Code Section 42-8-113, relating to renting, leasing, or lending motor vehicle to a probationer under this article prohibited, as follows:

"(a) No person shall knowingly rent, lease, or lend a motor vehicle to a person known to have had his or her driving privilege restricted ~~as a condition of probation~~ as provided in this article, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person whose driving privilege is restricted ~~as a condition of probation~~ as provided in this article shall notify any other person who rents, leases, or loans a motor vehicle to him or her of such driving restriction."

SECTION 6.

Said article is further amended by revising Code Section 42-8-117, relating to revocation of driving privilege for violation of probation, as follows:

"42-8-117.

(a)(1) In the event the sentencing court ~~finds~~ revokes a person's probation after finding that a such person has violated the terms of probation imposed the certificate of eligibility for an ignition interlock device limited driving permit or probationary license issued pursuant to subsection (a) of Code Section 42-8-111, the Department of Driver Services shall revoke that person's driving privilege for one year from the date the court revokes that person's probation. The court shall report such probation revocation to the Department of Driver Services by court order.

(2) This subsection shall not apply to any person whose limited driving permit has been revoked under subsection (d) of Code Section 42-8-112.

(b) In the event the sentencing court ~~finds~~ revokes a person's probation after finding that a such person has twice violated the terms of probation imposed the certificate of eligibility for an ignition interlock device limited driving permit or probationary license issued pursuant to subsection (a) of Code Section 42-8-111 during the same period of probation, the Department of Driver Services shall revoke that person's driving privilege for five years from the date the court revokes that person's probation for a second time. The court shall report such probation revocation to the Department of Driver Services by court order."

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.